



September 20, 2019

**VIA ELECTRONIC MAIL**

U.S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208  
[FOIArequest@state.gov](mailto:FOIArequest@state.gov)

**Re: Request for Expedited Processing of Freedom of Information Act Requests**

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of State (State), 22 C.F.R. Part 171, American Oversight makes the following request that five FOIA requests American Oversight previously submitted be processed on an expedited basis in light of recent developments that have created an urgency to inform the public about matters of great public concern.

American Oversight's requests seek records with the potential to shed light on the efforts of President Trump, his personal attorney, and his administration to encourage an investigation of a potential political opponent. As voting in the primaries of the 2020 presidential election commences in less than 5 months, there is an urgent need to inform the public about the administration's actions on this matter, and the records requested by American Oversight plainly have the potential to provide the needed information.

**American Oversight's Open FOIA Requests**

*May 21, 2019 Requests*

On May 21, 2019, American Oversight submitted two FOIA requests that followed reports that President Trump's personal lawyer, Rudolph Giuliani, planned to travel to Ukraine to meet with the country's president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.<sup>1</sup> Mr. Giuliani, reportedly aided by the president's former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that “[w]e're not meddling in an election, we're meddling in an investigation.”<sup>2</sup> Those requests sought, broadly speaking records reflecting communications between the president's personal lawyers and State officials, records reflecting communications concerning any effort to encourage the Ukrainian government to investigate the Biden family, and communications with or about former U.S. Ambassador to Ukraine Marie Yovanovitch, who was recalled from Ukraine around the time Mr. Giuliani's efforts to pressure the Ukrainian government to investigate one of the president's

<sup>1</sup> Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

<sup>2</sup> *Id.*



political opponents were publicly reported.<sup>3</sup> State acknowledged these requests by letters dated July 25, 2019 and assigned them tracking numbers F-2019-06331 and F-2019-06332.

*August 23, 2019 and September 11, 2019 Requests*

Following reports that U.S. Special Representative to Ukraine Kurt D. Volker helped to arrange talks between the president's personal lawyer—Mr. Giuliani—and Ukrainian officials,<sup>4</sup> American Oversight submitted a further request to State on August 23, 2019 seeking, broadly speaking, records reflecting Mr. Volker's communications with the president's personal lawyers or concerning any efforts to persuade the Ukrainian government to investigate one of the president's potential political opponents. American Oversight has not received a tracking number or acknowledgement letter to the August 23, 2019 request. It is attached as Exhibit A.

And, on September 11, 2019, in light of further reports that the meeting arranged by Mr. Volker between Mr. Giuliani and Ukrainian officials shortly followed the president's July 25, 2019 call with Ukrainian President Zelensky—in which the president reportedly asked Ukraine to investigate “corruption”<sup>5</sup>—American Oversight submitted two FOIA requests. One request sought Mr. Volker's recent calendars, and the other sought emails sent by key State officials during the relevant time period containing key terms that may relate to the efforts of the president and his personal lawyers to encourage the Ukrainian government to investigate a potential electoral opponent of the president. American Oversight has not received a tracking number or acknowledgement letter for either of the September 11, 2019 requests. They are attached as Exhibits B & C.

**American Oversight Requests Expedited Processing the Above-Described FOIA Requests**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 22 C.F.R. § 171.11(f)(2), American Oversight requests that your agency expedite the processing of the above requests.

I certify to be true and correct to the best of my knowledge and belief that there is a compelling need for expedited processing of the above requests because the information requested is urgently needed in order to inform the public concerning actual or alleged government activity and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public. 22 C.F.R. § 171.11(f)(2).

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA requests. First, since American Oversight's initial requests in May 2019, the time period before voting commences in the 2020 presidential election has further diminished. Voting in the presidential primary elections is now scheduled to commence in

<sup>3</sup> Robbie Gramer & Amy MacKinnon, *U.S. Ambassador to Ukraine Recalled in ‘Political Hit Job,’ Lawmakers Say*, FOREIGN POLICY (May 7, 2019, 12:09 PM), <https://foreignpolicy.com/2019/05/07/us-ambassador-to-ukraine-recalled-in-political-hit-job-lawmakers-say-marie-yovanovitch-lutsenko-right-wing-media-accusations-congress-diplomats-diplomacy/>; Letter from Sen. Chris Murphy to Sen. Jim Risch, Chairman, Comm. on Foreign Relations, May 10, 2019, <https://www.murphy.senate.gov/download/ukraine-giuliani-letter>.

<sup>4</sup> Kenneth P. Vogel (@kenvogel), TWITTER (Aug. 22, 2019, 6:30 PM), <https://twitter.com/kenvogel/status/1164666081501470727?s=20>.

<sup>5</sup> Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep't of State, Sep. 9, 2019, <https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000>.

less than five months, on February 3, 2020, and voting in the general election will start in just over a year.<sup>6</sup> Second, factual developments in the last week have raised concerns that the president and his private attorney, Mr. Giuliani, may be continuing or intensifying their efforts to use the authority and resources of the federal government to pressure the Ukrainian government to undertake an investigation of presidential candidate Joe Biden and his family. There is widespread public concern that a whistleblower complaint within the intelligence community relates to the president's efforts to pressure the Ukrainian government to conduct an investigation of a political opponent for the president's electoral benefit.<sup>7</sup> Mr. Giuliani, the president's personal lawyer, has again confirmed that he has endeavored to pressure Ukrainian authorities to begin an investigation.<sup>8</sup>

American Oversight's requests for communications with and about the president's personal lawyers and any effort to pressure Ukraine to undertake an investigation of the president's potential political opponent, as well as American Oversight's requests for information about top State officials involved in Ukraine policy (Ambassadors Volker and Yovanovitch), seek information that can shed light on whether and to what extent State and the Trump administration are attempting to use government resources to pressure a foreign nation to undertake actions designed to threaten, weaken, or otherwise target the president's political opponents for the purpose of giving him an electoral advantage. The public urgently needs the information American Oversight has requested before voting in the 2020 presidential election, including before voting in the primaries of that election. The public has a right to know if the president's administration's has inappropriately used government power to gain electoral advantage against an opponent through pressure on a foreign nation.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>9</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."<sup>10</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and

<sup>6</sup> Catherine Kim, *The 2020 Election Calendar*, Vox (Sept. 12, 2019, 11:56 PM), <https://www.vox.com/2019/6/26/18693259/2020-presidential-election-calendar-primaries>.

<sup>7</sup> See, e.g., John Wagner, *Trump Declines to Say Whether He Discussed Joe Biden in Call with Ukrainian President*, WASH. POST (Sept. 20, 2019, 12:27 PM), [https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey-conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b\\_story.html](https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey-conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b_story.html); Phil Helsel, *Whistleblower Complaint About Trump Involves Ukraine, Report Says*, NBC News (Sept. 19, 2019, 9:54 PM), <https://www.nbcnews.com/politics/white-house/whistleblower-complaint-about-trump-involves-ukraine-report-says-n1056751>.

<sup>8</sup> Robert Legare, *Rudy Giuliani Says He Didn't Ask Ukraine to Investigate Biden—And Then Says He Did*, CBS News (Sept. 20, 2019, 10:31 AM) <https://www.cbsnews.com/news/rudy-giuliani-chris-cuomo-interview-did-not-ask-ukraine-to-investigate-biden-and-then-says-he-did-cnn-appearance/>.

<sup>9</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>10</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

Twitter.<sup>11</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>12</sup> American Oversight's FOIA requests satisfy the criteria for expedited processing.

Please contact Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213 to discuss this request for expedited processing. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Melanie Sloan  
Senior Advisor  
American Oversight

<sup>11</sup> American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Sept. 20, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 20, 2019).

<sup>12</sup> See generally *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>; *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

# EXHIBIT A



August 23, 2019

VIA ELECTRONIC MAIL

U.S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208  
[FOIArequest@state.gov](mailto:FOIArequest@state.gov)

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of State (State), 22 C.F.R. Part 171, American Oversight makes the following request for records.

On May 9, 2019, President Trump's personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country's president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.<sup>1</sup> Mr. Giuliani, reportedly aided by the president's former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that “[w]e're not meddling in an election, we're meddling in an investigation.”<sup>2</sup> After facing widespread criticism for this effort to influence a foreign government's law enforcement efforts for political gain, Mr. Giuliani canceled his trip to Ukraine.<sup>3</sup>

It is more troubling that, shortly before Mr. Giuliani announced his plan to attempt to “meddl[e]” in a Ukrainian investigation related to one of the president's potential political opponents, State recalled U.S. Ambassador to Ukraine Marie Yovanovitch, a career foreign service officer who has served under Democratic and Republican presidents.<sup>4</sup> Ambassador Yovanovitch had faced criticism

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<sup>1</sup> Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Kenneth P. Vogel, *Rudy Giuliani Cancels His Trip to Ukraine, Blaming Democrats' 'Spin,'* N.Y. TIMES, May 11, 2019, <https://www.nytimes.com/2019/05/11/us/politics/rudy-giuliani-ukraine.html>.

<sup>4</sup> Robbie Grammer & Amy MacKinnon, *U.S. Ambassador to Ukraine Recalled in 'Political Hit Job,' Lawmakers Say*, FOREIGN POLICY (May 7, 2019, 12:09 PM), <https://foreignpolicy.com/2019/05/07/us-ambassador-to-ukraine-recalled-in-political-hit-job->



from conservative media for purportedly criticizing the president in private conversations.<sup>5</sup> Senator Chris Murphy has, further, expressed concern that Ambassador Yovanovitch's recall may be related to Mr. Giuliani's efforts to influence Ukrainian investigations.<sup>6</sup>

Recent reports suggest that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.<sup>7</sup> The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.<sup>8</sup>

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced State Department policies and actions in Ukraine, including actions related to the efforts of the president's personal attorney to persuade the Ukrainian government to conduct an investigation connected to a potential political opponent of the president.

### **Requested Records**

American Oversight requests that State produce the following records within twenty business days:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) U.S. Special Representative for Ukraine Negotiations Kurt D. Volker, or anyone serving as a Chief of Staff, deputy, confidential assistant, or executive assistant to Mr. Volker, and (2) Rudolph Giuliani, Victoria Toensing, or Joseph diGenova.
2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking

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[lawmakers-say-marie-yovanovitch-lutsenko-right-wing-media-accusations-congress-diplomats-diplomacy/](https://www.politico.com/article/2019/08/21/lawmakers-say-marie-yovanovitch-lutsenko-right-wing-media-accusations-congress-diplomats-diplomacy/).

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Sen. Chris Murphy to Sen. Jim Risch, Chairman, Comm. on Foreign Relations, May 10, 2019, <https://www.murphy.senate.gov/download/ukraine-giuliani-letter>.

<sup>7</sup> Kenneth P. Vogel & Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump's Political Opponents*, N.Y. TIMES, Aug. 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html?smid=nytcore-ios-share>.

<sup>8</sup> Kenneth P. Vogel (@kenvogel), TWITTER (Aug. 22, 2019, 6:30 PM), <https://twitter.com/kenvogel/status/1164666081501470727?s=20>.

points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of the U.S. Special Representative for Ukraine Negotiations Kurt D. Volker, or anyone serving as a Chief of Staff or deputy to Mr. Volker regarding (1) any plan by Rudolph Giuliani, Victoria Toensing, and/or Joseph diGenova to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials or (2) any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden.

Please provide all responsive records from March 1, 2019, through the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If State uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.<sup>9</sup> **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**<sup>10</sup>

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<sup>9</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>10</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered State’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>11</sup>** Furthermore, agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but State’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that State use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>12</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>13</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>14</sup> Further, “the withholding agency must supply ‘a relatively detailed

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only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>11</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>12</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>13</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>14</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphases in original).

justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.”<sup>15</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>16</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**You should institute a preservation hold on information responsive to this request.** American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, State is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and State can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

#### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16(a), American Oversight requests a waiver of fees associated with processing this request for records. First, the subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.<sup>17</sup> Second, the request is primarily and fundamentally for non-commercial purposes.<sup>18</sup>

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<sup>15</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>16</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>17</sup> 22 C.F.R. § 171.16(a)(1).

<sup>18</sup> 22 C.F.R. § 171.16(a)(2).

Under the public interest requirement, FOIA requesters must satisfy four factors.<sup>19</sup> American Oversight has met these four factors for the reasons set forth below. The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the Ukrainian government to investigate a family member of one of the president's potential political opponents just after the chief U.S. diplomat to Ukraine was recalled.<sup>20</sup> There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, including whether a career diplomat was displaced in connection with an effort to use the president's private attorney to lobby Ukrainian officials.<sup>21</sup> The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

Increasing the likelihood that disclosure of these records will contribute significantly to public understanding, American Oversight's objective is to reveal to the public at large any information it receives related to this FOIA request, and little information is currently available regarding the subject matter of this request—specifically, whether high-ranking State officials have coordinated with political allies of the president to displace a career diplomat in Ukraine for a perceived lack of political loyalty in conjunction with the efforts of the president's attorney to pressure the Ukrainian government to undertake investigations to benefit the president's perceived political interests.<sup>22</sup> American Oversight has the capacity to disseminate this information as it posts all records to its public websites and publishes analyses of its records. In the past, the organization has successfully informed the public of specific government activities and operations. As an example, American Oversight obtained Education Secretary DeVos's calendar entries, which revealed Secretary DeVos's frequent absences from office and the influence of charter schools and for-profit colleges on the Education Department.<sup>23</sup> The *New York Times* and CNN relied on American Oversight's analyses to report on Secretary DeVos's priorities within the Department of Education.<sup>24</sup>

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<sup>19</sup> *D.C. Technical Assistance Org. Inc. v. U.S. Dep't of Hous. and Urban Dev. (D.C. Technical Assistance)*, 85 F.Supp.2d 46, 48–49 (D.D.C. 2000) (requested documents will contribute to “greater understanding of government activities”).

<sup>20</sup> See Vogel *supra* note 1; Vogel *supra* note 3; Grammer & Mackinnon *supra* note 4.

<sup>21</sup> See Letter from Sen. Murphy, *supra* note 6.

<sup>22</sup> See Vogel *supra* note 1; Vogel *supra* note 3; Grammer & Mackinnon *supra* note 4.

<sup>23</sup> See *Influence & Access at the Department of Education*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/investigation/influence-access-at-the-department-of-education>; *Unexcused Absences: DeVos Calendars Show Frequent Days Off*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/unexcused-absences-devos>.

<sup>24</sup> Eric Lipton, *Betsy DeVos's School Schedule Shows Focus on Religious and Nontraditional Schools*, N.Y. TIMES, Oct. 27, 2017, <https://www.nytimes.com/2017/10/27/us/politics/betsy-devos-work-schedule-education.html>; Gregory Wallace et. al., *What Betsy DeVos's Schedule Tells Us About Her Agenda*, CNN (Oct. 29, 2017, 12:22 PM), <http://www.cnn.com/2017/10/28/politics/devos-schedules-education/index.html>.

American Oversight's request is also primarily and fundamentally for non-commercial purposes.<sup>25</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on our public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>26</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website<sup>27</sup> and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>28</sup> As an additional example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>29</sup>

Accordingly, American Oversight qualifies for a fee waiver.

## **Conclusion**

We share a common mission to promote transparency in government. American Oversight looks forward to working with State on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213. Also, if American Oversight's

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<sup>25</sup> 22 C.F.R. § 171.16(a)(2)(i)-(iii).

<sup>26</sup> American Oversight currently has approximately 12,300 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited May 20, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 20, 2019).

<sup>27</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>28</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>29</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Melanie Sloan  
Senior Advisor  
American Oversight

# EXHIBIT B



September 11, 2019

**VIA ELECTRONIC MAIL**

U.S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208  
[FOIArequest@state.gov](mailto:FOIArequest@state.gov)

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of State (State), 22 C.F.R. Part 171, American Oversight makes the following request for records.

On May 9, 2019, President Trump's personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country's president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.<sup>1</sup> Mr. Giuliani, reportedly aided by the president's former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that “[w]e're not meddling in an election, we're meddling in an investigation.”<sup>2</sup> After facing widespread criticism for this effort to influence a foreign government's law enforcement efforts for political gain, Mr. Giuliani canceled his trip to Ukraine.<sup>3</sup>

It is more troubling that, shortly before Mr. Giuliani announced his plan to attempt to “meddl[e]” in a Ukrainian investigation related to one of the president's potential political opponents, State recalled U.S. Ambassador to Ukraine Marie Yovanovitch, a career foreign service officer who has served under Democratic and Republican presidents.<sup>4</sup> Ambassador Yovanovitch had faced criticism

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<sup>1</sup> Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Kenneth P. Vogel, *Rudy Giuliani Cancels His Trip to Ukraine, Blaming Democrats' 'Spin,'* N.Y. TIMES, May 11, 2019, <https://www.nytimes.com/2019/05/11/us/politics/rudy-giuliani-ukraine.html>.

<sup>4</sup> Robbie Gramer & Amy MacKinnon, *U.S. Ambassador to Ukraine Recalled in 'Political Hit Job,' Lawmakers Say*, FOREIGN POLICY (May 7, 2019, 12:09 PM), <https://foreignpolicy.com/2019/05/07/us-ambassador-to-ukraine-recalled-in-political-hit-job->



from conservative media for purportedly criticizing the president in private conversations.<sup>5</sup> Senator Chris Murphy has, further, expressed concern that Ambassador Yovanovitch's recall may be related to Mr. Giuliani's efforts to influence Ukrainian investigations.<sup>6</sup>

Recent reports suggest that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.<sup>7</sup> The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.<sup>8</sup> Reports also indicate that this meeting occurred shortly after the president's July 25, 2019, call with Ukraine's president, in which President Trump reportedly asked Ukraine's government to prioritize "corruption" investigations.<sup>9</sup>

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced State Department policies and actions in Ukraine, including actions related to the efforts of the president's personal attorney to persuade the Ukrainian government to conduct an investigation connected to a potential political opponent of the president.

### **Requested Records**

American Oversight requests that State produce the following records within twenty business days:

All calendars or calendar entries<sup>10</sup> for U.S. Special Representative for Ukraine Negotiations Kurt D. Volker, including any calendars maintained on his behalf (e.g., by an administrative assistant) for the date range provided below.

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[lawmakers-say-marie-yovanovitch-lutsenko-right-wing-media-accusations-congress-diplomats-diplomacy/](#).

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Sen. Chris Murphy to Sen. Jim Risch, Chairman, Comm. on Foreign Relations, May 10, 2019, <https://www.murphy.senate.gov/download/ukraine-giuliani-letter>.

<sup>7</sup> Kenneth P. Vogel & Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump's Political Opponents*, N.Y. TIMES, Aug. 21, 2019,

<https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html?smid=nytcore-ios-share>.

<sup>8</sup> Kenneth P. Vogel (@kenvogel), TWITTER (Aug. 22, 2019, 6:30 PM),  
<https://twitter.com/kenvogel/status/1164666081501470727?s=20>.

<sup>9</sup> Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep't of State, Sep. 9, 2019, <https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000>.

<sup>10</sup> Though American Oversight has provided context related to Mr. Volker's involvement in an important matter, American Oversight notes that there is no subject matter limitation in this request for Mr. Volker's calendars and calendar entries.

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how Ambassador Volker allocates his time on agency business.

Please provide all responsive records from March 1, 2019, through the date the search is conducted.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16(a), American Oversight requests a waiver of fees associated with processing this request for records. First, the subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.<sup>11</sup> Second, the request is primarily and fundamentally for non-commercial purposes.<sup>12</sup>

Under the public interest requirement, FOIA requesters must satisfy four factors.<sup>13</sup> American Oversight has met these four factors for the reasons set forth below. The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the Ukrainian government to investigate a family member of one of the president's potential political opponents.<sup>14</sup> There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, including whether State Department officials are involved in an effort to use the president's private attorney to lobby Ukrainian officials.<sup>15</sup> The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

Increasing the likelihood that disclosure of these records will contribute significantly to public understanding, American Oversight's objective is to reveal to the public at large any information it receives related to this FOIA request, and little information is currently available regarding the subject matter of this request—specifically, whether high-ranking State officials have coordinated

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<sup>11</sup> 22 C.F.R. § 171.16(a)(1).

<sup>12</sup> 22 C.F.R. § 171.16(a)(2).

<sup>13</sup> *D.C. Technical Assistance Org. Inc. v. U.S. Dep't of Hous. and Urban Dev. (D.C. Technical Assistance)*, 85 F.Supp.2d 46, 48–49 (D.D.C. 2000) (requested documents will contribute to “greater understanding of government activities”).

<sup>14</sup> See Vogel *supra* note 1; Vogel *supra* note 3; Gramer & Mackinnon *supra* note 4.

<sup>15</sup> See Letter from Sen. Murphy, *supra* note 6, Vogel *supra* note 7.

with political allies of the president to displace a career diplomat in Ukraine for a perceived lack of political loyalty in conjunction with the efforts of the president's attorney to pressure the Ukrainian government to undertake investigations to benefit the president's perceived political interests.<sup>16</sup> American Oversight has the capacity to disseminate this information as it posts all records to its public websites and publishes analyses of its records. In the past, the organization has successfully informed the public of specific government activities and operations. As an example, American Oversight obtained Education Secretary DeVos's calendar entries, which revealed Secretary DeVos's frequent absences from office and the influence of charter schools and for-profit colleges on the Education Department.<sup>17</sup> The *New York Times* and CNN relied on American Oversight's analyses to report on Secretary DeVos's priorities within the Department of Education.<sup>18</sup>

American Oversight's request is also primarily and fundamentally for non-commercial purposes.<sup>19</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on our public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>20</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website<sup>21</sup>

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<sup>16</sup> See Vogel *supra* note 1; Vogel *supra* note 3; Gramer & Mackinnon *supra* note 4.

<sup>17</sup> See *Influence & Access at the Department of Education*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/investigation/influence-access-at-the-department-of-education>; *Unexcused Absences: DeVos Calendars Show Frequent Days Off*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/unexcused-absences-devos>.

<sup>18</sup> Eric Lipton, *Betsy DeVos's School Schedule Shows Focus on Religious and Nontraditional Schools*, N.Y. TIMES, Oct. 27, 2017, <https://www.nytimes.com/2017/10/27/us/politics/betsy-devos-work-schedule-education.html>; Gregory Wallace et. al., *What Betsy DeVos's Schedule Tells Us About Her Agenda*, CNN (Oct. 29, 2017, 12:22 PM), <http://www.cnn.com/2017/10/28/politics/devos-schedules-education/index.html>.

<sup>19</sup> 22 C.F.R. § 171.16(a)(2)(i)-(iii).

<sup>20</sup> American Oversight currently has approximately 12,200 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Sept. 10, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 10, 2019).

<sup>21</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>22</sup> As an additional example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>23</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Conclusion**

We share a common mission to promote transparency in government. American Oversight looks forward to working with State on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Melanie Sloan  
Senior Advisor  
American Oversight

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<sup>22</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>23</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

# EXHIBIT C



September 11, 2019

VIA ELECTRONIC MAIL

U.S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208  
[FOIArequest@state.gov](mailto:FOIArequest@state.gov)

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of State (State), 22 C.F.R. Part 171, American Oversight makes the following request for records.

On May 9, 2019, President Trump's personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country's president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.<sup>1</sup> Mr. Giuliani, reportedly aided by the president's former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that “[w]e're not meddling in an election, we're meddling in an investigation.”<sup>2</sup> After facing widespread criticism for this effort to influence a foreign government's law enforcement efforts for political gain, Mr. Giuliani canceled his trip to Ukraine.<sup>3</sup>

It is more troubling that, shortly before Mr. Giuliani announced his plan to attempt to “meddl[e]” in a Ukrainian investigation related to one of the president's potential political opponents, State recalled U.S. Ambassador to Ukraine Marie Yovanovitch, a career foreign service officer who has served under Democratic and Republican presidents.<sup>4</sup> Ambassador Yovanovitch had faced criticism

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<sup>1</sup> Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Kenneth P. Vogel, *Rudy Giuliani Cancels His Trip to Ukraine, Blaming Democrats' 'Spin,'* N.Y. TIMES, May 11, 2019, <https://www.nytimes.com/2019/05/11/us/politics/rudy-giuliani-ukraine.html>.

<sup>4</sup> Robbie Gramer & Amy MacKinnon, *U.S. Ambassador to Ukraine Recalled in 'Political Hit Job,' Lawmakers Say*, FOREIGN POLICY (May 7, 2019, 12:09 PM), <https://foreignpolicy.com/2019/05/07/us-ambassador-to-ukraine-recalled-in-political-hit-job->



from conservative media for purportedly criticizing the president in private conversations.<sup>5</sup> Senator Chris Murphy has, further, expressed concern that Ambassador Yovanovitch's recall may be related to Mr. Giuliani's efforts to influence Ukrainian investigations.<sup>6</sup>

Recent reports suggest that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.<sup>7</sup> The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.<sup>8</sup> Reports also indicate that this meeting occurred shortly after the president's July 25, 2019, call with Ukraine's president, in which President Trump reportedly asked Ukraine's government to prioritize "corruption" investigations.<sup>9</sup>

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced State Department policies and actions in Ukraine, including actions related to the efforts of the president's personal attorney to persuade the Ukrainian government to conduct an investigation connected to a potential political opponent of the president.

### **Requested Records**

American Oversight requests that State produce the following records within twenty business days:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by the specified State officials below containing the following key terms:

- i. Rudy
- ii. Rudolph
- iii. Giuliani

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[lawmakers-say-marie-yovanovitch-lutsenko-right-wing-media-accusations-congress-diplomats-diplomacy/](#)

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Sen. Chris Murphy to Sen. Jim Risch, Chairman, Comm. on Foreign Relations, May 10, 2019, <https://www.murphy.senate.gov/download/ukraine-giuliani-letter>.

<sup>7</sup> Kenneth P. Vogel & Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump's Political Opponents*, N.Y. TIMES, Aug. 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html?smid=nytcore-ios-share>.

<sup>8</sup> Kenneth P. Vogel (@kenvogel), TWITTER (Aug. 22, 2019, 6:30 PM), <https://twitter.com/kenvogel/status/1164666081501470727?s=20>.

<sup>9</sup> Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep't of State, Sep. 9, 2019, <https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000>.

- iv. Toensing
- v. diGenova
- vi. Hunter
- vii. Biden
- viii. Parnas
- ix. Fruman
- x. Kolomoisky
- xi. Klitschko
- xii. Burisma
- xiii. Shokin
- xiv. Lutsenko
- xv. Zelensky
- xvi. Zelenskyy
- xvii. Yermak
- xviii. "Ukraine Security Assistance Initiative"
- xix. USAI

Specified State Officials:

- i. Secretary Mike Pompeo
- ii. White House Liaison Carrie Cabelka, or any other individuals serving in the role of White House Liaison
- iii. Senior Advisors (to Secretary Pompeo) P. Michael McKinley, Mary Kissel, and Toni Porter
- iv. Counselor to the Secretary Thomas Ulruich Brechbuhl
- v. Senior Policy Advisor and Special Representative for Iran, Brian Hook
- vi. U.S. Special Representative for Ukraine Negotiations, Kurt D. Volker
- vii. Chargé d'Affaires, a.i. of the United States Embassy in Kyiv, William B. Taylor
- viii. Deputy Chief of Mission of the United States Embassy in Kyiv, Kristina A. Kvien
- ix. Acting Assistant Secretary of European and Eurasian Affairs, Philip Reeker
- x. U.S. Ambassador to Spain, Richard Duke Buchan III

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a specified official sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from July 23, 2019, through August 21, 2019.

## Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16(a), American Oversight requests a waiver of fees associated with processing this request for records. First, the subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.<sup>10</sup> Second, the request is primarily and fundamentally for non-commercial purposes.<sup>11</sup>

Under the public interest requirement, FOIA requesters must satisfy four factors.<sup>12</sup> American Oversight has met these four factors for the reasons set forth below. The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the Ukrainian government to investigate a family member of one of the president's potential political opponents.<sup>13</sup> There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, including whether State Department officials are involved in an effort to use the president's private attorney to lobby Ukrainian officials.<sup>14</sup> The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

Increasing the likelihood that disclosure of these records will contribute significantly to public understanding, American Oversight's objective is to reveal to the public at large any information it receives related to this FOIA request, and little information is currently available regarding the subject matter of this request—specifically, whether high-ranking State officials have coordinated with political allies of the president to displace a career diplomat in Ukraine for a perceived lack of political loyalty in conjunction with the efforts of the president's attorney to pressure the Ukrainian government to undertake investigations to benefit the president's perceived political interests.<sup>15</sup> American Oversight has the capacity to disseminate this information as it posts all records to its public websites and publishes analyses of its records. In the past, the organization has successfully informed the public of specific government activities and operations. As an example, American Oversight obtained Education Secretary DeVos's calendar entries, which revealed Secretary DeVos's frequent absences from office and the influence of charter schools and for-profit colleges on the

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<sup>10</sup> 22 C.F.R. § 171.16(a)(1).

<sup>11</sup> 22 C.F.R. § 171.16(a)(2).

<sup>12</sup> *D.C. Technical Assistance Org. Inc. v. U.S. Dep't of Hous. and Urban Dev. (D.C. Technical Assistance)*, 85 F.Supp.2d 46, 48–49 (D.D.C. 2000) (requested documents will contribute to “greater understanding of government activities”).

<sup>13</sup> See Vogel *supra* note 1; Vogel *supra* note 3; Gramer & Mackinnon *supra* note 4.

<sup>14</sup> See Letter from Sen. Murphy, *supra* note 6, Vogel *supra* note 7.

<sup>15</sup> See Vogel *supra* note 1; Vogel *supra* note 3; Gramer & Mackinnon *supra* note 4.

Education Department.<sup>16</sup> The *New York Times* and CNN relied on American Oversight’s analyses to report on Secretary DeVos’s priorities within the Department of Education.<sup>17</sup>

American Oversight’s request is also primarily and fundamentally for non-commercial purposes.<sup>18</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on our public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>19</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website<sup>20</sup> and published an analysis of what the records reflected about DOJ’s process for ethics waivers.<sup>21</sup> As an additional example, American Oversight has a project called “Audit the Wall,” where the organization is gathering and analyzing information and commenting on public releases of information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border.<sup>22</sup>

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<sup>16</sup> See *Influence & Access at the Department of Education*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/investigation/influence-access-at-the-department-of-education>; *Unexcused Absences: DeVos Calendars Show Frequent Days Off*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/unexcused-absences-devos>.

<sup>17</sup> Eric Lipton, *Betsy DeVos’s School Schedule Shows Focus on Religious and Nontraditional Schools*, N.Y. TIMES, Oct. 27, 2017, <https://www.nytimes.com/2017/10/27/us/politics/betsy-devos-work-schedule-education.html>; Gregory Wallace et. al., *What Betsy DeVos’s Schedule Tells Us About Her Agenda*, CNN (Oct. 29, 2017, 12:22 PM), <http://www.cnn.com/2017/10/28/politics/devos-schedules-education/index.html>.

<sup>18</sup> 22 C.F.R. § 171.16(a)(2)(i)-(iii).

<sup>19</sup> American Oversight currently has approximately 12,200 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Sept. 10, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 10, 2019).

<sup>20</sup> *DOJ Records Relating to Solicitor General Noel Francisco’s Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>21</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>22</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

Accordingly, American Oversight qualifies for a fee waiver.

### **Conclusion**

We share a common mission to promote transparency in government. American Oversight looks forward to working with State on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "MS".

Melanie Sloan  
Senior Advisor  
American Oversight